

104TH CONGRESS
1ST SESSION

S. 1501

To amend part V of title 28, United States Code, to require that the Department of Justice and State attorneys general are provided notice of a class action certification or settlement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 22, 1995

Mr. COHEN (for himself and Mr. NUNN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend part V of title 28, United States Code, to require that the Department of Justice and State attorneys general are provided notice of a class action certification or settlement, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Class Ac-
5 tion Plaintiffs Act of 1995”.

1 **SEC. 2. NOTIFICATION REQUIREMENT OF CLASS ACTION**
 2 **CERTIFICATION OR SETTLEMENT.**

3 (a) IN GENERAL.—Part V of title 28, United States
 4 Code, is amended by inserting after chapter 113 the fol-
 5 lowing new chapter:

6 **“CHAPTER 114—CLASS ACTIONS**

“Sec.

“1711. Notification of class action certifications and settlements.

7 **§ 1711. Notification of class action certifications and**
 8 **settlements**

9 “(a) For purposes of this section, the term—

10 “(1) ‘class’ means a group of similarly situated
 11 individuals, defined by a class certification order,
 12 that comprise a party in a class action lawsuit;

13 “(2) ‘class action’ means a lawsuit filed pursu-
 14 ant to rule 23 of the Federal Rules of Civil Proce-
 15 dure or similar State rules of procedure authorizing
 16 a lawsuit to be brought by 1 or more representative
 17 individuals on behalf of a class;

18 “(3) ‘class certification order’ means an order
 19 issued by a court approving the treatment of a law-
 20 suit as a class action;

21 “(4) ‘class member’ means a person that falls
 22 within the definition of the class;

23 “(5) ‘class counsel’ means the attorneys rep-
 24 resenting the class in a class action;

1 “(6) ‘electronic legal databases’ means com-
2 puter services available to subscribers containing
3 text of judicial opinions and other legal materials,
4 such as LEXIS or WESTLAW;

5 “(7) ‘official court reporter’ means a publicly
6 available compilation of published judicial opinions;

7 “(8) ‘plaintiff class action’ means a class action
8 in which the plaintiff is a class; and

9 “(9) ‘proposed settlement’ means a settlement
10 agreement between the parties in a class action that
11 is subject to court approval before it becomes bind-
12 ing on the parties.

13 “(b) This section shall apply to—

14 “(1) all plaintiff class actions filed in Federal
15 court; and

16 “(2) all plaintiff class actions filed in State
17 court in which—

18 “(A) any class member resides outside the
19 State in which the action is filed; and

20 “(B) the transaction or occurrence that
21 gave rise to the lawsuit occurred in more than
22 one State.

23 “(c) No later than 10 days after a proposed settle-
24 ment in a class action is filed in court, class counsel shall
25 serve the State attorney general of each State in which

1 a class member resides and the Department of Justice as
2 if they were parties in the class action with—

3 “(1) a copy of the complaint and any materials
4 filed with the complaint;

5 “(2) notice of any scheduled judicial hearing in
6 the class action;

7 “(3) any proposed or final notification to class
8 members of—

9 “(A) their rights to request exclusion from
10 the class action; and

11 “(B) a proposed settlement of a class ac-
12 tion;

13 “(4) any proposed or final class action settle-
14 ment;

15 “(5) any settlement or other agreement contem-
16 poraneously made between class counsel and counsel
17 for the defendants;

18 “(6) any final judgment or notice of dismissal;
19 and

20 “(7) any written judicial opinion relating to the
21 materials described under paragraphs (3) through
22 (6).

23 “(d) A hearing to consider final approval of a pro-
24 posed settlement may not be held earlier than 120 days
25 after the date on which the State attorney generals and

1 the Department of Justice are served notice under sub-
2 section (c).

3 “(e) A class member may refuse to comply with and
4 may choose not be bound by a settlement agreement or
5 consent decree in a class action lawsuit if the class mem-
6 ber resides in a State where the State attorney general
7 has not been provided notice and materials under sub-
8 section (c). The rights created by this subsection shall
9 apply only to class members or any person acting on their
10 behalf.

11 “(f) Any court order certifying a class, approving a
12 proposed settlement in a class action, or entering a con-
13 sent decree in a class action, and any written opinions con-
14 cerning such court orders and decrees, shall be made avail-
15 able for publication in official court reporters and elec-
16 tronic legal databases.

17 “(g) Any court with jurisdiction over a plaintiff class
18 action shall require that—

19 “(1) any written notice provided to the class
20 through the mail or publication in printed media
21 contain a short summary written in plain, easily un-
22 derstood language, describing—

23 “(A) the subject matter of the class action;

24 “(B) the legal consequences of joining the
25 class action;

1 “(C) if the notice is informing class mem-
2 bers of a proposed settlement agreement—

3 “(i) the benefits that will accrue to
4 the class due to the settlement;

5 “(ii) the rights that class members
6 will lose or waive through the settlement;

7 “(iii) obligations that will be imposed
8 on the defendants by the settlement;

9 “(iv) a good faith estimate of the dol-
10 lar amount of any attorney’s fee if pos-
11 sible; and

12 “(v) an explanation of how any attor-
13 ney’s fee will be calculated and funded;
14 and

15 “(D) any other material matter; and

16 “(2) any notice provided through television or
17 radio to inform the class of its rights to be excluded
18 from a class action or a proposed settlement shall,
19 in plain, easily understood language—

20 “(A) describe the individuals that may po-
21 tentially become class members in the class ac-
22 tion; and

23 “(B) explain that the failure of individuals
24 falling within the definition of the class to exer-
25 cise their right to be excluded from a class ac-

1 tion will result in the individual’s inclusion in
 2 the class action.

3 “(h) Compliance with this section shall not immunize
 4 any party from any legal action under Federal or State
 5 law, including actions for malpractice or fraud.”.

6 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 7 The table of chapters for part V of title 28, United States
 8 Code, is amended by inserting after the item relating to
 9 chapter 113 the following:

“114. Class Actions 1711”.

10 **SEC. 3. APPLICABILITY.**

11 This Act and the amendments made by this Act shall
 12 apply to all class action lawsuits filed after or pending on
 13 the date of enactment of this Act.

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